

Pharmaceutical glass, with the exception of syringes used in treating diabetes in human beings, is not a medical appliance eligible for the 1% sales tax rate. See 86 Ill. Adm. Code 130.310. Pharmaceutical glass may, however, be sold tax free as a sale of containers for resale. See, 86 Ill. Adm. Code 130.2070. (This is a GIL.)

March 11, 2004

Dear Xxxxx:

This letter is in response to your e-mailed letter dated February 18, 2003, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We currently file a Sales & Use Tax Report monthly for our manufacturing company. We manufacture Pharmaceutical glass, does this mean we qualify to withhold and be assessed taxes at the rate of 1% based on your State & Use Tax Return form. We strongly feel that our product falls under the category of 'Food, drugs, and medical appliances'.

Currently we record our Sales and Purchases under the 'General merchandise' category with a rate of 6.25%, but would like to change that practice and record under 'Food, drugs and medical appliances' and submit returns with the 1% applicable rate.

Department's Response:

For your information, we have enclosed a copy of 86 Ill. Adm. Code 130.310, which is the Department's regulation for "Food, Drugs, Medicines and Medical Appliances." This administrative rule describes how sales of food and drugs can be subject to either low (1%) or high (6.25%) State tax rates under the Retailers' Occupation Tax Act. Local sales taxes may also apply, depending upon where retail sales are made.

A medicine or drug is any pill, powder, potion, salve, or other preparation intended by the manufacturer for human use and which purports on the label to have medicinal qualities. See 86 Ill. Adm. Code 130.310(c)(1). Pharmaceutical glass, as packaging for pharmaceuticals, is not itself a medicine or drug eligible for the low (1%) tax rate.

A medical appliance is an item which is intended by its manufacturer for use in directly substituting for a malfunctioning part of the body. Included in the exemption as medical appliances are such items as artificial limbs, dental prostheses and orthodontic braces, crutches and orthopedic braces, wheelchairs, heart pacemakers, and dialysis machines (including the dialyzer). Other medical tools, devices and equipment such as x-ray machines, laboratory equipment, and surgical instruments which may be used in the treatment of patients but, which do not directly substitute for a malfunctioning part of the human body do not qualify as exempt medical appliances. See 86 Ill. Adm. Code 130.310(c)(2). Syringes that are used in treating diabetes in human beings do qualify for the reduced tax rate. See 86 Ill. Adm. Code 130.310(d). With the exception of syringes used in treating diabetes in human beings, pharmaceutical glass is not covered by the definition of "medical appliance" and does not qualify for the reduced (1%) tax rate.

To the extent, however, that the pharmaceutical glass that you manufacture is sold to a purchaser for resale and not for use or consumption by that purchaser, you are not required to collect or remit sales or use taxes on the sale, if the transaction is handled as a sale for resale. If it is a sale for resale, the seller can accept a resale or registration number and Certificate of Resale from the purchaser as evidence that the purchase is a purchase for resale. See 86 Ill. Adm. Code 130.1401, enclosed for your reference. More specifically, the sale of containers is governed by 86 Ill. Adm. Code 130.2070 (enclosed). Sellers of containers to purchasers who sell tangible personal property contained in such containers to others are deemed to make sales of such containers to purchasers for purposes of resale, the receipts from which sales are not subject to the Retailers' Occupation Tax, if the purchasers of such containers transfer the ownership of the containers to their customers together with the ownership of the tangible personal property contained in such containers. (86 Ill. Adm. Code 130.2070(a)). Any pharmaceutical glass that you sell that meets these criteria may be sold tax-free if you comply with the sale for resale requirements of Section 130.1401.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Sincerely,

Samuel J. Moore
Associate Counsel

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